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6 Foursquare Labs, Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

10 MOBILE COMMERCE FRAMEWORK, INC.

Case No. 11-CV-0481-BEN-BLM

Plaintiff,

13 | v.

**DEFENDANT FOURSQUARE LABS,
INC.'S ANSWER TO COMPLAINT AND
COUNTERCLAIMS**

FOURSQUARE LABS, INC.

16 | Defendant.

JURY TRIAL DEMANDED

17 | FOURSQUARE LABS, INC.

18 Counterclaimant

21 MOBILE COMMERCE FRAMEWORK, INC.

22 | Counterclaim Defendant

25 Pursuant to Rule 8 of the Federal Rules of Civil Procedure, Defendant Foursquare Labs, Inc.
26 (“Foursquare”) hereby responds to the Complaint of Mobile Commerce Framework, Inc. (“MCF”) on
27 personal knowledge, as follows.

ANSWER

1 Foursquare denies each and every allegation contained in the Complaint that is not expressly
2 admitted below. Any factual allegation admitted below is admitted only as to the specific admitted
3 facts, not as to any purported conclusions, characterizations, implications, or speculations that
4 arguably follow from the admitted facts. Foursquare denies that MCF is entitled to the relief
5 requested or any other.

6 **PARTIES**

7 1. Foursquare is without sufficient knowledge or information to form a belief as to the
8 truth of the allegations contained in paragraph 1, and for that reason denies them.

9 2. Foursquare admits that it is a company with its principal place of business at 36
10 Cooper Square, 6th Floor, New York, NY 10003.

11 **JURISDICTION**

12 3. Foursquare admits that this action purports to arise under the patent laws of the United
13 States, 35 U.S.C. § 1 *et seq.*

14 4. As this action purports to arise under the patent laws of the United States, 35 U.S.C. §
15 1, *et seq.*, this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338.

16 5. Foursquare does not contest that it is subject to this Court's personal jurisdiction.
17 Foursquare denies the remaining allegations contained in paragraph 5.

18 6. Foursquare does not contest venue in this district. Foursquare denies the remaining
19 allegations contained in paragraph 6.

20 **BACKGROUND**

21 7. Foursquare admits that United States Patent No. 7,693,752 is entitled "Mobile
22 Commerce Framework," and was issued on April 6, 2010. Foursquare is without sufficient
23 knowledge or information to form a belief as to the truth of the remaining allegations contained in
24 paragraph 7, and for that reason denies them.

25 8. Foursquare is without sufficient knowledge or information to form a belief as to the
26 truth of the remaining allegations contained in paragraph 8, and for that reason denies them.

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9. Foursquare admits that it makes and distributes in the United States software applications for mobile devices that allow users to access Foursquare's services. Foursquare denies the remaining allegations contained in paragraph 9.

COUNT I

(ALLEGED INFRINGEMENT OF THE '752 PATENT)

10. Foursquare incorporates its responses to the previous paragraphs of the Complaint as though fully set forth herein.

11. Foursquare denies the allegations contained in paragraph 11.

12. Foursquare denies the allegations contained in paragraph 12.

13. Foursquare denies the allegations contained in paragraph 13.

14. Foursquare denies the allegations contained in paragraph 14.

MCF'S REQUEST FOR RELIEF

Foursquare hereby incorporates by reference its answers to all paragraphs in MCF's Complaint as though fully set forth herein.

Foursquare denies that MCF is entitled to any or all of the relief requested in its Complaint.

AFFIRMATIVE DEFENSES

Foursquare reserves the right to allege defenses in addition to the following as they become known through the course of discovery.

First Defense - Noninfringement

1. Foursquare has not infringed and does not infringe either directly, jointly, contributorily, or by inducement any valid and enforceable claim of the '752 patent, either literally or under the doctrine of equivalents.

Second Defense - Invalidity

2. One or more claims of the '752 patent are invalid for failure to comply with the requirements of 35 U.S.C. § 101 *et seq.*, including without limitation, §§ 101, 102, 103 and/or 112.

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Third Defense – Estoppel/Laches/Waiver

3. One of more of MCF's claims are barred, in whole or in part, by the doctrines of estoppel, laches, and/or waiver.

Fourth Defense – Limitation of Remedies

4. MCF is not entitled to injunctive relief because any alleged injury to MCF is not immediate or irreparable, and MCF has an adequate remedy at law.

COUNTERCLAIMS

For its counterclaim against Plaintiff Mobile Commerce Framework Inc. (“MCF”), Counterclaim-Plaintiff Foursquare Labs, Inc. (“Foursquare”) alleges as follows:

PARTIES

1. Counterclaim-Plaintiff Foursquare is a Delaware corporation with its principal place of business at 36 Cooper Square, 6th Floor, New York, NY 10003.

2. On information and belief, Counterclaim-Defendant MCF is a California corporation with its principal place of business at 24196 Alicia Parkway, Suite L, Mission Viejo, California 92691.

JURISDICTION AND VENUE

3. This action arises under the patent laws of the United States, 35 U.S.C. § 101 *et seq.*, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.* This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

4. This Court has personal jurisdiction over MCF and venue is proper in this Court because this is the Court in which MCF instituted this action.

COUNT I

DECLARATION OF NONINFRINGEMENT OF U.S. PATENT NO. 7,693,752

5. An actual and justiciable controversy requiring declaratory relief exists between Foursquare and MCF as evidenced by MCF's Complaint, alleging infringement of United States Patent No. 7,693,752 ("the '752 patent") by Foursquare.

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1 6. Foursquare has not infringed and does not infringe either directly, jointly,
2 contributorily, or by inducement any valid and enforceable claim of the '752 patent, either literally or
3 under the doctrine of equivalents.

COUNT II

DECLARATION OF INVALIDITY OF U.S. PATENT NO. 7,693,752

6 7. The claims of the '752 patent are invalid for failure to comply with the requirements of
7 35 U.S.C. § 101 *et seq.*, including without limitation, §§ 101, 102, 103 and/or 112.

PRAYER FOR RELIEF

WHEREFORE, Foursquare prays for an order entering judgment as follows:

10 A. Denying all claims for relief set forth in the Complaint and entering judgment in favor
11 of Foursquare on all claims;

12 B. Declaring that Foursquare has not infringed and does not infringe directly, jointly,
13 contributorily, or by inducement any valid and enforceable claim of the '752 patent, either literally or
14 under the doctrine of equivalents.

C. Declaring that the claims of the '752 patent are invalid.

16 D. Awarding Foursquare its costs in this matter;

E. Awarding Foursquare its attorneys' fees pursuant to 35 U.S.C. § 285; and

18 F. Awarding any other relief as the Court deems just and proper.

19 DATED: May 13, 2011

WILLENKEN WILSON LOH & LIEB LLP

By: s William A. Delgado

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1 **JURY TRIAL DEMAND**

2 Foursquare hereby demands a trial by jury on all issues so triable.

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4 DATED: May 13, 2011

WILLENKEN WILSON LOH & LIEB LLP

5
6 By: /s William A. Delgado.

7 William A. Delgado
8 Attorneys for Defendant
Foursquare Labs, Inc.

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1 **CERTIFICATE OF SERVICE**
2

3 I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the
4 CM/ECF system which will send notification of such filing to the Electronic Service List for this
5 Case.

6
7 DATED: May 13, 2011

WILLENKEN WILSON LOH & LIEB LLP

8 By: /s William A. Delgado.

9 William A. Delgado
10 Attorneys for Defendant
11 Foursquare Labs, Inc.

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